

(2019) 04 P&H CK 0168
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7140 Of 2019

Shri Raghunath Rai Memorial Educational And Charitable Trust (SRMECT) And Others APPELLANT

Vs

Debt Recovery Appellate Tribunal, Hotel Samrat, New Delhi And Others RESPONDENT

Date of Decision : 03-04-2019

Acts Referred:

Securitization And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2)
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 04 P&H CK 0168

Hon'ble Judges : Ajay Kumar Mittal, J; Manjari Nehru Kaul, J

Bench : Division Bench

Advocate : V.K. Sachdeva, Gaurav Goel

Final Decision : Allowed

Judgement

1. In this petition filed under Articles 226/227 of the Constitution of India, the petitioners have, inter alia, prayed for issuance of a writ of certiorari for quashing the order dated 23.4.2018 (Annexure P-1) vide which respondent No.2 had declined to take on record the written statement filed by them in OA No. 5186/2017 instituted by respondent No.3 by declining to recall the order dated 26.2.2018 (Annexure P-2) closing the right of the petitioners to file written statement; to quash the order dated 17.1.2019 (Annexure P-3) passed by respondent No.1 dismissing Appeal No. 262/2018 filed by the petitioners and upholding the order dated 23.4.2018 passed by respondent No.2 closing the rights of the petitioners. Further, a writ of mandamus has been sought directing respondent No.2 to take on record the written statement filed by the petitioners.

2. Petitioner No.1 had been set up in the year 2002 and had established various Educational Institutions and Colleges in the State of Punjab. The petitioner had been availing the financial assistance from Punjab National Bank and State Bank

of India till 2011. Vide sanction letter dated 24.11.2011, respondent No.3 took over the loans from the said banks and sanctioned term loans of Rs.39.42 crores and an overdraft facility of Rs.4 crores. Respondent No.3 kept on sanctioning the enhanced facilities till 2016. After the last sanction and renewal of credit facilities on 30.7.2016, respondent No.3 vide its letter dated 31.10.2016 (Annexure P-4) certified that all the credit loan accounts aggregating Rs.55.65 crores were standard and regular as on 31.10.2016 and that there were no overdues in the accounts. In the year 2016-17, there was financial problem due to reduction in number of students and also due to non-release of huge funds by the State Government which fact was informed by the petitioners to respondent No.3. However, respondent No.3 declared the account of the petitioners as Non-Performing Asset (NPA) on 30.4.2017 and issued a notice dated 3.5.2017 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (In short "SARFAESI Act") for the payment of Rs.57.02 crores. On 26.10.2017, the petitioners submitted a detailed Restructuring Proposal along with a TEV Study and requested respondent No.3 to restructure the loan account in terms of the Reserve Bank of India Guidelines, but to no effect. Respondent No.3 filed OA-5186-2017 before respondent No.2 for the recovery of an amount of Rs.59,57,74,380.68 alleged to be due as on 31.8.2017. Respondent No.2 vide order dated 16.9.2017 (Annexure P-4A) adjourned the case to 10.1.2018 for service of the petitioners and acknowledgment report. Respondent No.2 vide order dated 10.1.2018 (Annexure P-5) proceeded ex parte against the petitioners and adjourned the matter to 17.1.2018 with a direction to respondent No.3 to produce the original documents along with affidavit. On the said date, respondent No.3 produced the original documents and respondent No.2 adjourned the matter to 25.1.2018 as is clear from the order, Annexure P-6. The petitioners moved an application dated 23.1.2018 for setting aside the ex parte order. Respondent No.2 vide order dated 23.1.2018 (Annexure P-6A) set aside the ex parte proceedings and adjourned the matter to 25.1.2018. On 25.1.2018 (Annexure P-7), respondent No.3 supplied the copy of OA (Annexure P-8) and the petitioners were directed to file reply for which the matter was adjourned to 26.2.2018. On the said date, the counsel for the petitioners got little late and respondent No.2 had already dictated the order that no written statement had been filed and if the written statement was filed on that day, then it would be taken on record otherwise right to file written statement would stand automatically closed. Accordingly, the matter was adjourned to 23.4.2018 as is clear from the order dated 26.2.2018 (Annexure P-2). Respondent No.2 had marked the presence of the counsel after the pronouncement of the order and recorded that he had been apprised of the order. Respondent No.3 vide letter dated 16.4.2018 (Annexure P-9) rejected the Restructuring Proposal of the petitioners. The petitioner moved an application dated 23.4.2018 (Annexure P-10) before respondent No.2 for recalling the order dated 26.2.2018 and prayed that written statement dated 23.4.2018 (Annexure P-11) may be permitted to be taken on record. However, the Tribunal vide order dated 23.4.2018 (Annexure P-1) dismissed the said application and declined to

take on record the written statement which had already been filed by the petitioners vide Diary No.7602 dated 23.4.2018 in OA-5186-2017. Feeling aggrieved, the petitioners filed Misc. Appeal No. 262 of 2018 on 21.5.2018 (Annexure P-11A) before respondent No.1. Respondent No.3 filed reply dated 28.9.2018 to the said appeal. Respondent No.1 vide order dated 17.1.2019 (Annexure P-3) dismissed the appeal filed by the petitioners. Against the letter dated 16.4.2018 rejecting the Restructuring Proposal of the petitioners, the petitioners filed CWP-13566-2018 which was dismissed as withdrawn by this Court vide order dated 25.5.2018 (Annexure P-12) with liberty to the petitioners to approach respondent No.3 again so as to explain that the reason assigned in the order for not restructuring the loan account were contrary to records. Hence, the present writ petition.

3. We have heard learned counsel for the parties.

4. According to the learned counsel for the petitioners, on 25.1.2018, the petitioners were supplied the paper-book of the OA and a direction was issued by respondent No.2 to file written statement on 26.2.2018. On the said date, the learned counsel was slightly late due to traffic congestion and could not appear in time when the case was called. However, immediately thereafter the learned counsel appeared and was apprised of the order already passed that if the written statement was not filed on 26.2.2018 itself then the rights of the petitioners to file written statement would be automatically closed. Since the reschedulement of petitioner No.1 was pending with respondent No.3, therefore, the petitioners could not file their written statement on 26.2.2018 as in the event of acceptance of proposal, the OA would have been withdrawn. On the said date, the matter was adjourned to 23.4.2018. However, respondent No.3 vide letter dated 16.4.2018 rejected the proposal of the petitioners. On 23.4.2018, the petitioners filed an application to recall the order dated 26.2.2018 and sought permission to place on record the written statement. Respondent No.2 vide order dated 23.4.2018 declined to recall the order dated 26.2.2018 and to take on record the written statement. It was urged that extension of time may be allowed in the given circumstances which are exceptional and had occasioned due to reasons beyond the control of the party. It was claimed that grave injustice would occasion if the time was not extended. However, the prayer of the petitioners was opposed by learned counsel for the respondent-bank.

5. After hearing learned counsel for the parties and appreciating factual matrix involved herein, it is observed that the procedure is the handmaid of justice. The court must always be anxious to do justice and to prevent victories by way of technical knock outs. Further, if the party fails to file the written statement within the stipulated/prescribed period, the filing of the same should not be shut unless the non-filing of the written statement/defence is attributable to the negligence or intentional default on the part of the party concerned.

6. Adverting to the facts and circumstances of the situation in hand, although the written statement was to be filed and the petitioners could not file the same due

to pendency of restructuring proposal with respondent No.3, their defence had been struck off only on the ground that no written statement was filed. Non-filing of written statement in the circumstances was not for delaying the effective and early disposal of the petition and moreover, it had not caused any prejudice to the other party. The written statement of the petitioners would be necessary for the just decision of the issue pending before respondent No.2.

7. In view of the above, in the interest of justice, the present writ petition is allowed and the orders dated 23.4.2018 (Annexure P-1), 26.2.2018 (Annexure P-2) passed by respondent No.2 and dated 17.1.2019 (Annexure P-3) passed by respondent No.1 are set aside. Respondent No.2-Debt Recovery Tribunal, Chandigarh is directed to take on record the written statement filed by the petitioners in OA-5186-2017 and to proceed further in the matter, in accordance with law.